

**Docket No. 971-129**

**PATENT**

**CERTIFICATE OF EXPRESS MAIL**

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Catherine L. Vigil

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE**

Applicant: Robert Musson :  
Serial No.: To Be Assigned : Group Art Unit:  
Filed: To Be Assigned : Examiner:  
For: **Methods and Systems for Licensing Electronic Data**

**PETITION TO PROCEED WITH NON-SIGNING INVENTOR UNDER 37 C.F.R. § 1.47(b)**

Assistant Commissioner for Patents  
Washington, DC 20231

Dear Sir:

In accordance with 37 C.F.R. § 1.47(b) Novell, Inc. respectfully requests that the enclosed application be permitted to proceed without the signature of the sole inventor, Robert Musson. Attached are the affidavits of Novell's Patent Paralegal, Amy Cottle, and Novell's Patent Agent/Attorney, Joseph P. Mehrle asserting the relevant facts to justify this request.

Mr. Musson's last known address is: 07/30/2001 SZEWDIE1 00000028 09915030  
3684 Wrangler Way 04 FC:122 130.00 OP  
Park City, Utah 84098.

Novell's interest in this application is evinced by attached Exhibit A, demonstrating Mr. Musson executed an Intellectual Property Agreement and an Employment Agreement, requiring his cooperation and assignment of the attached application.

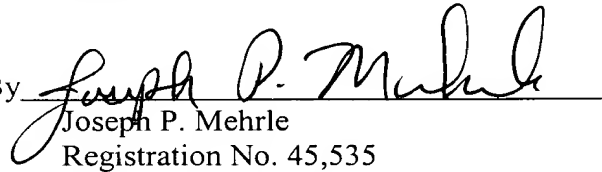
Moreover, the application has been completed and ready for Mr. Musson's review since February 2, 2001. Further delay may significantly prejudice Novell's interests. The entire application with drawings, declaration/power of attorney, and assignment documents were sent by overnight mail to Mr. Musson for execution or review and revision on June 26, 2001 along with a prepaid self-addressed envelope for him to return the same (attached Exhibit B). Still, Mr. Musson refuses to respond or participate in any manner.

For all the attached reasons and documents demonstrating Novell's proprietary interest in the attached application, Novell respectfully requests that this application be permitted to proceed under 37 C.F.R. § 1.47(b). A declaration signed by an officer of Novell on behalf of Mr. Musson is also attached for review.

Moreover, the requisite fee of \$130.00, is attached as a separate check to complete this request. Please charge any additional required fee, or credit any overpayment, to Deposit Account No. 04-1133.

Respectfully submitted,

By



Joseph P. Mehrle

Registration No. 45,535

Attorney for Applicant

DINSMORE & SHOHL LLP

1900 Chemed Center

255 East Fifth Street

Cincinnati, OH 45202

(513) 977-8176

**AFFIDAVIT OF JOSEPH P. MEHRLE**

Joseph P. Mehrle, being first duly cautioned and sworn, states the following upon personal knowledge and information:

1. I am a Patent Agent and Attorney for Dinsmore & Shohl, in Cincinnati, Ohio, and I am responsible for preparing and prosecuting various patent matters for Novell, Inc.

2. I personally communicated with former Novell employee, Robert Musson with respect to the enclosed patent application both while Mr. Musson was employed at Novell and subsequently after he left the employ of Novell.

3. I personally communicated and continue to communicate with Novell's Patent Paralegal, Amy Cottle, regarding the patent application I drafted for Mr. Musson's invention.

4. I was contacted by Novell in the fall of 2000, regarding the invention of Mr. Musson, and instructed by Novell on November 2, 2000 to prepare a patent application on behalf of Mr. Musson for the benefit of Novell. Prior to this date, I did have a personal phone interview with Mr. Musson regarding his invention, I spoke with Mr. Musson while he was still employed by Novell. On November 2, 2000, I was informed that Mr. Musson was no longer employed by Novell and I was given correspondence information for Mr. Musson by Novell so that I could directly communicate with Mr. Musson in order to complete the patent application.

5. On February 2, 2001, I personally sent via electronic mail a draft patent application, including drawings to Mr. Musson, and on February 3, 2001 Mr. Musson confirmed via electronic response that he had in fact received the draft application, but he questioned whether his new employment permitted him to participate in reviewing the application or assisting in any way.

6. Upon receipt of this electronic correspondence from Mr. Musson on February 3, 2001, I forwarded it to Novell's Patent Paralegal, Ms. Cottle, who responded to Mr. Musson via


electronic mail on February 5, and Ms. Cottle began to interact directly with Mr. Musson to get his participation and review of the same.

7. Since February 5, 2001, I have had numerous correspondences with Ms. Cottle at Novell regarding the progress in obtaining Mr. Musson's review, and on May 21, 2001, Ms. Cottle informed me that Novell wanted to proceed with the patent filing of the draft application prepared for Mr. Musson's invention, under 37 C.F.R. 1.47(b), to preserve Novell's rights and interests.


8. On June 6, I received Mr. Musson's executed Intellectual Property Agreement and Employment Agreement from Ms. Cottle, indicating that Novell did have a vested interest and right in Mr. Musson's invention and draft patent application, see attached Exhibit A.

9. On June 26, I did personally send via Federal Express the draft application to Mr. Musson at the following address 3684 Wrangler Way, Park City, Utah 84098, I also sent and presented to Mr. Musson a Declaration/Power of Attorney and an Assignment along with instructions on how to execute these documents. Moreover, a prepaid self-addressed envelope was provided for Mr. Musson's convenience, and I reminded Mr. Musson's of his prior executed Intellectual Property Agreement and Employment Agreement. The cover letter associated with this correspondence is attached as Exhibit B, wherein Mr. Musson was advised that if I did not receive modifications or the executed documents by July 9, 2001 I would be filing on behalf of Novell to preserve Novell's interest in the invention.

10. As of the date of this Affidavit, July 23, 2001, I have had no response whatsoever from Mr. Musson regarding this application.

  
Joseph P. Mehrle Reg. No. 45,535

Sworn to me and subscribed in my presence this 23 day of June 2001.

  
Notary Public

THOMAS S. CALDER  
Notary Public, State of Ohio  
by commission has no expiration date  
Section 147.03 B, C,

## **AFFIDAVIT OF AMY COTTLE**

Amy Cottle, being first duly cautioned and sworn, states the following upon personal knowledge and information:

1. I am a Patent Paralegal for Novell, Inc., and I am responsible for managing Novell's Patent Program and portfolio on a day to day basis. I also act as a liaison between Novell's outside counsel and Novell's employee inventors.

2. I personally communicated with former Novell employee, Robert Musson with respect to the enclosed patent application both while Mr. Musson was employed at Novell and subsequently after he left the employ of Novell.

3. I personally communicated and continue to communicate with Novell's outside patent agent/counsel, Joseph Mehrle, regarding Mr. Musson and the patent application drafted by Mr. Mehrle on behalf of Novell for Mr. Musson's invention.

4 On February 5, 2001 after receiving an electronic mail correspondence from Mr. Mehrle, attaching a draft patent application, and a corresponding electronic mail response from Mr. Musson declining to review the attached patent application which was prepared for Mr. Musson's review, I did personally send an electronic mail response to Mr. Musson reminding him of his obligation under his prior employment and invention agreements to assist Novell in the matter and further offered to compensate Mr. Musson for his time in doing the same, at the expense of Novell.

5. Moreover, on February 6, 2001, I had a personal phone conversation with Mr. Musson, wherein Mr. Musson stated he would review the draft patent application and was willing to proceed. He also indicated he had no further questions and that he had a copy of the application sent by Mr. Mehrle, along with Mr. Mehrle's contact information. Further, Mr. Musson indicated that the best way to contact him was via his electronic email.

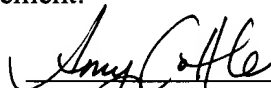
6. On March 14, 2001 I sent an electronic mail message to Mr. Musson asking if he had had a chance to review the application and further asking that he try to complete his review by March 30, 2001. I received no response to this electronic mail message.

7. On March 27, 2001 I personally had a phone conversation with Mr. Musson. I asked if he had completed his review of the application, Mr. Musson indicated that he had not and instructed me to follow up with him on April 16, 2001.

8. On April 23, 2001, April 30, 2001, and again on May 8, 2001 I personally left voice mail messages for Mr. Musson on his office phone (801) 838-7300 asking if had finished reviewing the application and for Mr. Musson to call me to discuss.

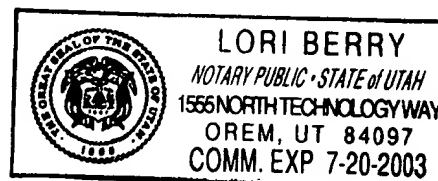
9. On May 16, 2001 I personally left a voice message on Mr. Musson's home answering machine (435) 649-4196 and I further sent an electronic mail message indicating that we need the application reviewed in a timely manner, that I had tried unsuccessfully to contact him, that Novell continues to desire to file a patent application on his invention embodied in the application, and asked if he had yet reviewed the draft or had any intentions of doing so. As of the date of this Affidavit I have received no response from Mr. Musson.

10. On June 6, 2001, at the request of Mr. Mehrle, I prepared the above summary of events and I further sent to Mr. Mehrle executed copies of Mr. Musson's Intellectual Property Agreement and original Employment Agreement.

  
\_\_\_\_\_  
Amy Cottle

Sworn to me and subscribed in my presence this 9 day of July 2001.

  
\_\_\_\_\_  
Notary Public



## INTELLECTUAL PROPERTY AGREEMENT

This Agreement made between Novell, Inc., (the "Company") and (Employee's Full Name \_\_\_\_\_)

Robert Murren,  
(the "Employee"), will be effective as of the date of employment of a new employee or, in the case of a current employee, on the date signed by the Employee. For the purposes of this Agreement, the "Company" will mean Novell, Inc. or any division, subsidiary, Affiliated Company of Novell, Inc., or successor in business to any of the foregoing to which employee may be transferred.

An "Affiliated Company" of Novell will be a company directly or indirectly controlling, controlled by or under common control with Novell, Inc. A company is controlled by ownership of more than 50% of shares entitled to vote for directors or persons performing a similar function, or by actual control of the Board of Directors.

In return for new employment or continued employment of Employee by the Company, the parties agree as follows:

### 1. COVENANT AGAINST DISCLOSURE.

Employee will have possession of or access to information owned by Company or any of its Affiliated Companies, or entrusted to it, that derives independent economic value, actual or potential, to the owner of the information by reason of not being generally known to the public, or to other persons who can obtain economic value from its disclosure or use, and is subject to efforts by the owner which are reasonable under the circumstances to maintain its secrecy ("Proprietary Information"). The information may include, by way of example, know-how, algorithms, software programs, schematics, source documents, materials, contracts, customer information, financial information, personnel information, product development, engineering, strategic and tactical plans, sales and marketing plans, and business plans of Company or its Affiliated Companies. Employee agrees:

- (a) not to use, disclose, reproduce, or transfer any such information or material for himself or others, and;
- (b) not to take any such material or reproductions thereof from Company facilities,

at any time during or after employment by Company, except as required in discharging Employee's duties to

Company. Employee agrees immediately to return all such material and reproductions thereof in his possession to Company upon request and in any even upon termination of employment (with or without cause).

Except with prior written authorization by Company, Employee agrees not to disclose or publish any Proprietary Information, or any trade secret or confidential technical or business information or material of Company or its Affiliated Companies or of another party to whom Company owes an obligation of confidence, at any time during or after employment by Company.

2. **DISCLOSURE OBLIGATIONS.** Employee will fully and promptly disclose and furnish to Company a complete record of any and all computer programs, trade secrets, inventions, discoveries, improvements, copyrightable materials, processes, manufacturing techniques, formulas, or know-how, whether patentable or not, which he, solely or jointly, may conceive, make or discover during the period of his employment by Company which were developed using Company time or resources or which relate to the Company's business or to the Company's reasonably anticipated business ("Inventions"). In addition, Employee agrees to disclose promptly in writing to Novell all Inventions that are based in whole or in part on Proprietary Information, and are made or conceived by Employee, either alone or with others, after the date hereof. Employee agrees to make and maintain adequate and current written records of all such Inventions in the form of notes, sketches, drawings, or reports relating thereto, which records will be and remain the property of and available to the Company at all times.

3. **ASSIGNMENT.** Employee agrees to and does hereby grant and assign to Company or its nominee his entire right, title and interest in and to Inventions coming within the scope of Paragraph 2 that relate in any way to the actual or anticipated business or activities of Company or its Affiliated Companies, or that are suggested by or result from any task or work for, or on behalf of Company together with any and all domestic and foreign rights in such Inventions. Employee agrees to cooperate with Novell and its designees, both during and after Employee's employment separation, with the procurement and maintenance, at Novell's expense and discretion, of

agrees and acknowledges Novell's "at will" employment policy, which is that Novell reserves the right to discontinue Employee's employment at any time for any reason or no reason without notice, and that Novell accords Employee the right to discontinue employment at any time for any reason or no reason without notice. Employee agrees that nothing in this Agreement will be construed as a limitation of the rights of Novell to terminate Employee's employment with Novell at any time for any reason or no reason without notice.

EMPLOYEE Robert Musson  
Print Full Name

Employee acknowledges reading and understanding this Agreement.

By Robert Musson Date 7-1-00  
Employee's Full Signature

Office location P.O. Box

NOVELL, INC.  
By Krishna Park Date 3/1/00  
Company's Authorized Representative



**ACCEPTANCE AND ACKNOWLEDGMENT**

I accept the offer of employment from Novell as set forth in the offer letter. I understand and acknowledge that my employment with Novell is for no particular duration and is at-will, meaning that Novell or I may terminate the employment relationship at any time, with or without cause and with or without prior notice. Additionally, I acknowledge that this offer of employment is contingent upon successful completion of a background check which is currently in progress and, if applicable, upon authorization in the form of an export license from the U.S. Dept. of Commerce, Bureau of Export Administration, Office of Export Licensing or the U.S. Department of State, Office of Defense Trade Controls.

I understand and agree that the terms and conditions set forth in the offer letter represent the entire agreement between Novell and me superseding all prior negotiations and agreements, whether written or oral. I understand that the terms and conditions described in the offer letter, along with the current Intellectual Property Agreement are the terms and conditions of my employment. No one other than Novell's Senior Vice President of Human Resources or the CEO of Novell is authorized to enter into any employment or other agreement which modifies the terms of the offer letter and the Intellectual Property Agreement, and any such modification must be in writing and signed by either such executive. In addition, I understand that any promotions, increases in compensation and/or offers regarding other positions must be in writing and signed by my manager and the appropriate individual in the Human Resources Department. I understand that Novell may modify salary and benefits as well as other plans and programs from time to time as it deems necessary. As an employee of Novell I understand and agree that I will be bound to abide by the company's policies and procedures.

Robert M. Murren  
Signature

Robert M. Murren  
Printed Name

1-13-00  
Date

Please indicate for which department you are accepting employment:

X Steve Goodman – Common Install

       Mikko Valimaki – NDS Development

**DINSMORE  
& SHOHL LLP**  
Attorneys at Law

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e-mail: [jmehrle@dinslaw.com](mailto:jmehrle@dinslaw.com)

June 26, 2001

**PRIVILEGED & CONFIDENTIAL**

**via FEDERAL EXPRESS**

Mr. Robert Alan Musson  
3684 Wrangler Way  
Park City, Utah 84098

Re: U.S. Patent Application  
**METHODS AND SYSTEMS FOR LICENSING ELECTRONIC DATA**  
Novell's Reference No.: IDR-470; Our Reference No.: 971-129

Dear Mr. Musson:

Please find enclosed the draft patent application originally sent for your review on February 2, 2001 which you acknowledged receipt of by return email on February 3, 2001. Novell and I have since attempted to contact you regarding this application on numerous occasions. The application enclosed is the same application sent for your review on February 2, 2001. No changes have been made other than the addition of your middle name on the first page.

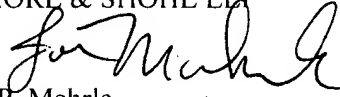
Also enclosed for your review and signature are a Declaration and Power of Attorney as well as an Assignment of the invention to Novell. Please sign these documents, have the Assignment notarized and return them to me in the enclosed self addressed and prepaid envelope no later than **July 6, 2001**, or alternatively please provide me your edits/modifications to the application.

If I do not hear from you by **July, 9, 2001** then I will proceed to file the application in your name on behalf of Novell by petition, indicating that you have been unresponsive and that this is necessary to preserve Novell's interests. Moreover, I will attach your signed Intellectual Property Agreement with Novell, executed on March 1, 2000 along with your originally signed Employment Agreement, executed on January 13, 2000. I will also attach this correspondence as well as all correspondence which Novell or I have had with you in an attempt to obtain your signature voluntarily on the enclosed application.

I continue to remain optimistic that you will be responsive by reviewing and executing the enclosed documents. If there is question/assistance which you need to achieve this, please do not hesitate to contact me at the above-listed electronic mail or telephone number. Moreover, Ms. Cottle at Novell is available to assist you if you need anything from her. I look forward to your cooperation in this matter.

Very truly yours,

DINSMORE & SHOHL LLP

  
Joseph P. Mehrle

JPM/bsg

Enclosures

cc: Ms. Amy Cottle (via facsimile w/o encs.)  
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